who sell water for household purposes. The defendant was held liable, on an implied warranty of wholesomeness, regardless of any negligence on its part, because the plaintiff had contracted typhoid fever from the water which its municipal waterworks had furnished.

The reason given for these holdings bases them squarely, not on any *real* assumption of liability, but on a liability *imposed by law as a matter of public policy.* In *Jackson v. Watson & Sons,* [1909] 2 K. B. 193, it was said by Vaughn Williams, L. J., that the cause of action, whether in form of tort or of contract arose out of a duty following the *relation* of the parties.

Should Mr. Justice McKenna ever desire to withdraw from his position in the *Arizona Copper Co. case,* without the appearance of having reversed himself, he might say boldly, on the precedent of *Parks* v. *Yost Pie Co.,* "Practically, an employer must know his employment is safe, or take the consequences." Or he might say, more euphemistically but none the less legitimately, "In every contract of employment there is, if public policy so requires, an implied warranty that the work is safe." J. B. W.

CONTRACTS FOR THE BENEFIT OF A THIRD PERSON IN MICHIGAN.—In the recent case of *Preston* v. *Preston* the supreme court of Michigan had occasion to consider the question as to whether or not one for whose benefit a contract is made has any enforcible rights. The suit was one in Chancery, the donee plaintiff was an invalid, and every consideration of justice and equity demanded that she be given relief. The court had, however, to face the fact that in recent cases it had indicated its opinion to be that the third party beneficiary has no rights. In *Modern Maccabees* v. *Sharp,* (1910) 163 Mich. 449, 456 the court speaking through the late Justice Ostrander had said, "The general rule in this state is regarded as settled. I see no reason for saying that it is not the same in proceedings at law and in equity." Again in *In re Bush's Estate,* (1917) 199 Mich. 192, 196, Justice Kuhn, the writer of the opinion in the principal case, had said, "No serious claim is made that a promise made by one person to another for the benefit of a third—a stranger to the consideration—will support an action by the latter according to the law of this state." And at page 199, "But the situation before us is not merely a question of applying the remedy to the rights of the parties, but under the law as it existed at the time this claim was filed, the claimant had no rights arising out of the transaction against the defending estate."

The court in its first opinion in the case, reported at 205 Mich. 646, took the position that the rule as above announced had been so far changed by Sec. 10, Chap. 12, Act No. 314, Pub. Acts 1915 (3 MICH. COMP. LAWS 1915, § 12361) as to enable the donee beneficiary to maintain a suit in equity on the promise made for her benefit. That this view is untenable was shown in a note in a recent number of this review (18 MICH. L. REV. 58) wherein the hope was expressed that a more satisfactory basis might be found for the holding. On rehearing, in an opinion recently filed but not yet reported, the court receded from the position originally taken and now supports its judgment on entirely different grounds. From a reconsideration of the evidence in the case it now finds as a fact that the promise was made directly to the

plaintiff, although the consideration was furnished by plaintiff's mother who, according to the original finding, was the sole promisee. As a result of this interpretation of the evidence the court concludes that the plaintiff is a privy to the contract and as such entitled to maintain the suit on the ground that this is an exception to the rule denying a right of action to one for whose benefit a contract is made. (175 N. W. 266.)

It is quite obvious that the court in its conclusion has confused two questions which are essentially different. If the plaintiff was a party to the contract—a promisee—,as the court finds, then the case is not one involving a contract for the benefit of a third person at all in the sense in which that phrase is commonly employed, and it simply makes confusion worse confounded to say that it is an exception to the general rule. There is under these circumstances no want of privity in the plaintiff—the usual ground for denying relief in third party cases—and the only question involved is whether or not a party to a contract may enforce a promise made to him, the consideration for which was furnished by another. This question has always been answered in the affirmative in Michigan, both at law and in equity, and it has never been asserted that this holding at all conflicts with the rule denying the right of a third party beneficiary. *Monaghan* v. *Agricultural Fire Ins. Co.,* 53 Mich. 238; *Clark* v. *Clark,* 134 Mich. 602 (*semble*); *Palmer* v. *Bray,* 136 Mich. 85. This is in accord with the generally prevailing rule in this country. *Van Eman* v. *Stanchfield,* 10 Minn. 255; *Rector* v. *Teed,* 120 N. Y. 583; *Palmer Savings Bank* v. *Ins. Co.,* 166 Mass. 189; *Williamson* v. *Yager,* 91 Ky. 282. *Contra*: *Dunlop* v. *Selfridge,* [1915] A. C. 847.

In view of the evident uncertainty in regard to the third party's rights it may be worth while to try to determine just what has been decided by the court. Where the action was one at law for breach of promise, the uniform holding has been that the third party has no enforcible rights, and this is true as well in the case of a sole or donee beneficiary as in the case of a creditor beneficiary. *Pipp* v. *Reynolds,* 20 Mich. 88; *Turner* v. *McCarty,* 22 Mich. 264; *Halsted* v. *Francis,* 31 Mich. 112; *Hicks* v. *McGarry,* 38 Mich. 667; *Hidden* v. *Chappel,* 48 Mich. 527; *Edwards* v. *Clement,* 81 Mich. 513; *Wheeler* v. *Stewart,* 94 Mich. 445; *Linneman* v. *Moross,* 98 Mich. 178; *Signs* v. *Bush Estate,* 199 Mich. 192. But where the defendant has received specific funds to be delivered to the third party, it is held the latter may enforce the obligation in general assumpsit. *Fay* v. *Anderson,* 48 Mich. 259. It has also been held that a sole beneficiary to whom the promisee has assigned his rights under the contract may enforce the claim at law as assignee, and it is intimated that he may recover substantial damages. *Ebel* v. *Piehl,* 134 Mich. 64. Such a result would, however, be difficult to justify in view of the fact that the ordinary rule would limit the recovery in such a case to nominal damages. See *Burbank* v. *Gould,* 15 Me. 118; *Adams* v. *Union R. R. Co.,* 21 R. I. 134. Search has failed to disclose any suit in Chancery brought by the beneficiary, except that of a mortgagee beneficiary to be mentioned later, in which a decision of this question was necessary to dispose of the case. *Modern Maccabees* v. *Sharp, supra,* is not an exception to this statement for the reason that in that case the court apparently found as a fact that the

promise sued on had not been made. See head note to the case. Assuming the alleged promise to have been made, it was clearly one which would only incidentally have benefitted the plaintiff and cannot therefore be said to have been made for his benefit. The court has, however, frequently expressed the opinion *obiter* either that relief in equity would be granted to the beneficiary or that the question is still an open one. See *Linneman* v. *Moross,* 9 Mich. 178; *Clare* v. *Warner,* 106 Mich. 695; *Palmer* v. *Bray,* 136 Mich. 85. In *Peer* v. *Kean,* 14 Mich. 354, where A contracted with B on a consideration furnished by the latter to build a ship and on its completion to convey a one-half interest to B's wife upon payment by her of certain charges, the court granted specific performance of the promise at the suit of B, the promisee. Whether the same relief would have been granted at the suit of the wife was not indicated. The mortgagee beneficiary has always been granted relief in equity as against the grantee of the mortgaged premises who assumed the mortgage, but whether on the theory of subrogation or by reason of a statute (COMP. L. 1915 § 12680) the court has not always definitely indicated. *Crawford* v. *Edwards,* 33 Mich. 353; *Miller* v. *Thompson,* 34 Mich. 9; *Corning* v. *Burton,* 102 Mich. 86.

It is quite clear that the third party, at any rate where he is a sole or donee beneficiary, ought to be given relief. The cases show that parents as well as others frequently make provision in this way for those dependent upon their bounty. To deny the latter a remedy is to enrich the unscrupulous at the expense of the needy. While the rule of *stare decis* probably precludes the giving of relief in an action at law, the question is apparently still an open one in equity, and relief in the nature of specific performance would not seem to be inconsistent with equitable principles. Such a holding would make it unnecessary to strain the facts to do justice in a particular case. Perhaps legislative action on the matter would not be untimely. G. C. G.

PUBLIC UTILITIES—FRANCHISE RATES AS AFFECTED BY THE WORLD WAR.—The economic convulsions due to the World War are abundantly reflected in the relations between the public and their public utilities operating under franchises fixing rates for service. The enormous rise in cost of labor and materials has, in many cases, so reduced the net income of such utilities as to make it a negative quantity at existing franchise rates. The utilities are crying to be saved from bankruptcy, but the unfortunate suspicion bred by past dealings of many such companies has made the public skeptical, and perhaps in many cases entirely unreasonable. In some cases plain selfishness may explain the attitude on both sides. The Supreme Court of the United States has recently held that a contract is still a contract, notwithstanding the critical conditions caused by the war. *Columbus Ry. P. & L. Co.* v. *Columbus,* (U. S. 1919) 39 Sup. Ct. 349, (see 17 MICH. L. REV. 689), followed in *Michigan Ry. Co.* v. *Lansing,* (1919) 260 Fed. 322. Though the German steamship company may have been justified in turning back and failing to carry out its contract to deliver at Plymouth and Cherbourg gold shipped on the Kronprinzessin Cecilie, since the imminent danger of capture by a belligerent which would have ended possibility of performance excused